

1 THE HONORABLE THOMAS S. ZILLY  
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11 UNITED STATES DISTRICT COURT  
12 WESTERN DISTRICT OF WASHINGTON  
13 AT SEATTLE

14 STEPHEN BUSHANSKY, derivatively on behalf  
15 of ATHIRA PHARMA, INC.,

16 Plaintiff,

17 vs.

18 LEEN KAWAS, KELLY A. ROMANO, JOSEPH  
19 EDELMAN, JOHN M. FLUKE, JR., JAMES A.  
20 JOHNSON, BARBARA KOSACZ, and MARK  
21 LITTON,

22 Defendants,

23 and

24 ATHIRA PHARMA, INC.,

25 Nominal Defendant.

26 Case No. 2:22-cv-497-TSZ

27 **PLAINTIFFS' UNOPPOSED MOTION  
FOR APPROVAL OF ATTORNEYS'  
FEES AND EXPENSES AND SERVICE  
AWARDS TO PLAINTIFFS**

28 **NOTED ON MOTION CALENDAR:  
JULY 12, 2024**

29 PLAINTIFFS' UNOPPOSED MOTION FOR  
30 APPROVAL OF ATTORNEYS' FEES AND  
31 EXPENSES AND SERVICE AWARDS TO  
32 PLAINTIFFS

33 **WEISS LAW**  
34 305 Broadway, 7th Floor  
35 New York, New York 10007  
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37 Lead Case No. 2:22-cv-497-TSZ

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10 THOMAS HOULIHAN, derivatively on behalf of  
ATHIRA PHARMA, INC., Plaintiff,  
11  
12 vs.  
13 LEEN H. KAWAS, KELLY A. ROMANO,  
JOSEPH EDELMAN, JOHN M. FLUKE, JR.,  
JAMES A. JOHNSON, BARBARA KOSACZ,  
MARK LITTON, and KEVIN CHURCH,  
14  
15 Defendants,  
16 and  
17 ATHIRA PHARMA, INC.,  
18 Nominal Defendant.  
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Case No. 2:22-cv-620-TSZ

PLAINTIFFS' UNOPPOSED MOTION FOR  
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Lead Case No. 2:22-cv-497-TSZ

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1   **I. INTRODUCTION**

2         Plaintiffs Stephen Bushansky (“Bushansky”) and Thomas Houlihan (“Houlihan”)  
 3 respectfully present this Motion for Approval of Attorneys’ Fees and Expenses and Service Awards  
 4 to Plaintiffs as provided for in the Stipulation of Settlement and Release Agreement dated March 15,  
 5 2024 (the “Stipulation” or “Stip.”).<sup>1</sup> The Settlement was reached after extensive arm’s-length  
 6 negotiations between well-informed, experienced counsel, with the assistance of a highly qualified  
 7 mediator following substantial investigation. *See Declaration of David C. Katz and Patrick Slyne*  
 8 (“Lead Counsel Decl.”), ¶¶ 5, 19-24. The Settlement, including the agreed-upon Fee And Expense  
 9 Amount, has been evaluated and approved by a Committee of independent directors appointed by  
 10 the Athira Pharma, Inc. (“Athira” or the “Company”) Board of Directors (the “Board”), with the  
 11 assistance of its own independent counsel and in the exercise of its business judgment. The Board,  
 12 in the exercise of its business judgment and upon the recommendation of the Committee also  
 13 approved the Settlement, including the Fee and Expense Amount. Further, the Board issued a  
 14 resolution that the Settlement and its terms provide a substantial benefit to, and are in the best  
 15 interests of, the Company and its stockholders and agreed to enact the Governance Reforms within  
 16 sixty (60) days of entry of Judgment if the Settlement is approved by the Court. Stip. at 5, §IV.

17         The Court preliminarily approved the Settlement on May 3, 2024. Pursuant to the  
 18 Preliminary Approval Order, Notice is being disseminated to Current Athira Stockholders. The Final  
 19 Approval Hearing is scheduled to be held on July 18, 2024. If approved, the Settlement would fully  
 20 resolve this consolidated stockholder derivative action brought for the benefit of Athira and two  
 21 separate litigation demands made upon the Board by Athira stockholders Ali Soofi (“Soofi”) and  
 22 Travis Vrana (“Vrana”) alleging similar conduct as the consolidated derivative action.

23         The Settlement is an outstanding resolution and the product of extensive arm’s-length

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24         <sup>1</sup> Unless otherwise defined, capitalized terms will have the same meaning as set forth in the  
 25 Stipulation attached as Exhibit A to the Declaration of David C. Katz in Support of Plaintiffs’  
 26 Unopposed Motion for Preliminary Approval of Derivative Settlement (ECF No. 18), all emphasis  
 is added, and internal quotation marks and citations are omitted.

1 negotiations between the Parties, overseen by Jed D. Melnik, Esq. of JAMS, an experienced  
 2 mediator (the “Mediator”), who also separately mediated the resolution of the Securities Class  
 3 Action. Stip. at 4. After reaching agreement in principle on the substantive consideration for the  
 4 Settlement, the Settling Parties commenced good faith, arm’s-length negotiations concerning  
 5 attorneys’ fees, expenses and service awards to plaintiffs, all overseen and assisted by the Mediator.  
 6 In recognition of the substantial benefits the Settlement confers on Athira and its stockholders, Athira  
 7 has agreed to pay and/or cause to be paid to Plaintiffs’ Counsel the Fee and Expense Amount of  
 8 \$1,150,000, subject to this Court’s approval. Plaintiffs respectfully submit that the Fee and Expense  
 9 Amount is fair and reasonable in light of the substantial value conferred upon Athira and its  
 10 stockholders by the Settlement and all other relevant factors.

11 Plaintiffs also seek approval of a modest \$3,000 Service Award for each Plaintiff in the  
 12 Derivative Actions, totaling \$12,000, to be paid from the Fee and Expense Amount, to compensate  
 13 them for stepping forward and dedicating their time and attention to the successful prosecution of  
 14 this matter on behalf of Athira and Current Athira Stockholders.

15 **II. THE AGREED-UPON FEE AND EXPENSE AWARD IS  
 16 FAIR AND REASONABLE AND SHOULD BE APPROVED**

17 **A. The Fee And Expense Amount Was Agreed To At Arm's-Length With The  
 Assistance Of An Experienced Mediator**

18 The U.S. Supreme Court has endorsed the consensual resolution of attorneys’ fees as the ideal  
 19 toward which litigants should strive. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (“A request for  
 20 attorney’s fees should not result in a second major litigation. Ideally, of course, litigants will settle the  
 21 amount of a fee.”); *see also Cohn v. Nelson*, 375 F. Supp. 2d 844, 861 (E.D. Mo. 2005) (“where, as here,  
 22 the parties have agreed on the amount of attorneys’ fees and expenses, courts give the parties’ agreement  
 23 substantial deference”).

24 Where there is no evidence of collusion and no detriment to the parties, as here, the Court should  
 25 give “substantial weight to a negotiated fee amount.” *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 695

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1 (N.D. Ga. 2001); *see Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)  
 2 (“[T]he court’s intrusion upon what is otherwise a private consensual agreement negotiated between the  
 3 parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the  
 4 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,  
 5 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”); *In re Apple*  
 6 *Computer, Inc. Derivative Litig.*, 2008 U.S. Dist. LEXIS 108195, at \*12 (N.D. Cal. Nov. 5, 2008)  
 7 (“A court should refrain from substituting its own value for a properly bargained-for agreement.”).

8       A mediator’s involvement in the negotiation of attorneys’ fees ensures there was no collusion  
 9 and that the fees reflect an agreement reached at arm’s-length. *See In re Apple Inc. Device Performance*  
 10 *Litig.*, 2021 U.S. Dist. LEXIS 50550, at \*44 (N.D. Cal. Mar. 17, 2021) (highlighting that the  
 11 settlement was reached “only after extensive arm’s-length negotiations between experienced  
 12 counsel, including several in-person mediation sessions and additional negotiations facilitated by  
 13 [the mediator]” “demonstrates non-collusive conduct”); *In re AOL Time Warner S'holder Derivative*  
 14 *Litig.*, 2009 U.S. Dist. LEXIS 124372, at \*74 (S.D.N.Y. Feb. 1, 2010) (A ““mediator’s involvement in  
 15 ... settlement negotiations helps to ensure that the proceedings were free of collusion and undue  
 16 pressure.””) (quoting *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001)).

17       Here, the Court is not being called upon to fashion a fee and expense amount; rather, the Court  
 18 is respectfully requested to determine whether the Fee and Expense Amount agreed to by well-  
 19 represented parties at arm’s-length, and with the assistance of an experienced mediator, is fair and  
 20 reasonable under the circumstances. Unlike in class actions, where the diverging interests of class  
 21 counsel and absent class members at the fee stage warrant close judicial scrutiny, in these stockholder  
 22 Derivative Actions, Athira and the Defendants were parties to the negotiations, were represented by their  
 23 own top-flight legal counsel, and had every incentive to pay no more than the lowest possible amount of  
 24 attorneys’ fees.

25  
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1       After the principle terms of the Settlement were reached, Plaintiffs' Counsel negotiated with their  
 2 adversaries, who witnessed their litigation efforts and results firsthand. Defendants' Counsel are  
 3 employed by some of the finest and most respected firms in the country, have litigated complex  
 4 stockholder actions for many years, and know the applicable law pertaining to attorneys' fees. The  
 5 Settling Parties' negotiations were based upon a knowledgeable analysis of what fair and reasonable  
 6 attorneys fees would be for the benefits achieved and were informed by their counsel's knowledge of  
 7 fees in similar situations. In such circumstances, the end result of those negotiations—reflecting all  
 8 Parties' experiences and the Mediator's efforts to reach an appropriate amount of attorneys' fees—is  
 9 entitled to a great deal of judicial weight. *See Court Awarded Attorney's Fees*, 108 F.R.D. 237, 267 (3d.  
 10 Cir. 1985); *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974) ("in cases of this  
 11 kind, we encourage counsel on both sides to utilize their best efforts to understandingly, sympathetically,  
 12 and professionally arrive at a settlement as to attorneys' fees." ).

13       The Ninth Circuit has enumerated several factors to consider when determining the  
 14 reasonableness of attorneys' fees, including: (1) the results achieved; (2) the risks of litigation; (3)  
 15 the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried  
 16 by plaintiffs' counsel; and (6) the awards made in similar cases. *In re MRV Commc'ns, Inc.*  
*Derivative Litig.*, 2013 U.S. Dist. LEXIS 86295, at \*8 (C.D. Cal. June 6, 2013).<sup>2</sup> The Fee and  
 18 Expense Amount is demonstrably fair and reasonable in light of these factors.

19       **B.      The Fee And Expense Amount Is Fair And Reasonable Considering The**  
**Results Obtained**

20       "[T]he most critical factor in determining the reasonableness of a fee award is the degree of  
 21 success obtained." *Klein v. City of Laguna Beach*, 810 F.3d 693, 698-99 (9th Cir. 2016) (quoting *Farrar*  
 22

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23       <sup>2</sup> Athira is a Delaware corporation, and the courts of Delaware courts use similar factors: (1) the  
 24 results accomplished for the benefit of the stockholders; (2) the efforts of counsel and the time spent  
 25 on the case; (3) the contingent nature of the fee; (4) the difficulty of the litigation; (5) and the standing  
 26 and ability of counsel involved. *In re Infinity Broad. Corp. S'holders Litig.*, 802 A.2d 285, 293 (Del.  
 27 2002) (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980)).

28       PLAINTIFFS' UNOPPOSED MOTION FOR  
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1 *v. Hobby*, 506 U.S. 103, 114 (1992). Plaintiffs in representative actions such as the Derivative Actions  
 2 are entitled to an award of attorneys' fees if their efforts confer a substantial benefit on the corporation  
 3 and/or its stockholders. *See In re Nvidia Corp. Derivative Litig.*, 2009 U.S. Dist. LEXIS 24973, at \*12  
 4 (N.D. Cal. Mar. 18, 2009) ("Under the 'substantial benefit' doctrine, counsel who prosecute a  
 5 shareholders' derivative case which confers benefits on the corporation are entitled to an award of  
 6 attorneys' fees and costs.") It is well established that the benefit to the company need not be pecuniary  
 7 in nature, and that corporate governance reforms furnish a benefit to all stockholders. *Mills v. Elec.*  
 8 *Auto-Lite Co.*, 396 U.S. 375, 395 (1970) ("[A] corporation may receive a 'substantial benefit' from a  
 9 [stockholder's action], justifying an award of counsel fees, regardless of whether the benefit is pecuniary  
 10 in nature.... "); *Lewis v. Anderson*, 692 F.2d 1267, 1271 (9th Cir. 1982) (finding that corporate  
 11 governance reforms are "sufficiently beneficial to a corporation" to warrant settlement approval and  
 12 an attorneys' fee award); *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1445-50 (N.D. Cal. 1994)  
 13 (governance changes likely to produce monetary benefits or cost avoidance are "'fund creating actions'"  
 14 meriting attorneys' fees and expenses) (quoting *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162,  
 15 1164-65 (Del. 1989)).

16 Here, the significant therapeutic benefits conferred upon Athira and Current Athira  
 17 Stockholders as a result of the Settlement well-merit approval of the Fee and Expense Amount. *See*  
 18 *Chrysler Corp. v. Dann*, 223 A.2d 384, 386-89 (Del. 1966) (holding that changes in corporate policy  
 19 or a heightened level of protection for stockholders justifies an award of counsel fees); *see also*  
 20 *Maher v. Zapata Corp.*, 714 F.2d 436, 466 (5th Cir. 1983) (approving fees in a therapeutic derivative  
 21 settlement because "influencing the future conduct may serve the interests of the corporation as fully  
 22 as a recovery for past misconduct [...]."); *Seinfeld v. Robinson*, 246 A.D.2d 291, 298 (N.Y. App. 1st  
 23 Dep't. 1998) (approving fees for settlement of a derivative action that resulted in the corporation  
 24 "implementing procedures that will prevent the exact sequence of events from reoccurring,  
 25 [therefore] plaintiffs have furnished a benefit to all shareholders").

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As a result of the events at issue, the Company has agreed to pay \$10 million to settle claims in the Securities Class Action; its market capitalization over the course of the class period in that Action plunged by about \$75 million. The Settlement's preventing, or at least reducing, the possibility of Athira suffering similar (or even greater) harm in the future has a value that likely exceeds any monetary damages Plaintiffs could recover through further litigation. Athira has agreed to maintain the Governance Reforms for a minimum of five (5) years, which is a meaningful amount of time to ensure that the Governance Reforms become embedded in the Company's policies, practices, and corporate culture. *See Cohn*, 375 F. Supp. 2d at 850 (finding that corporate governance enhancements that must be in place for no less than three years will "provide meaningful ways of avoiding the problems [the company] experienced in the recent past"). In light of the substantial benefits conferred upon Athira and Current Athira Stockholders, the agreed Fee and Expense Amount is eminently reasonable. Indeed, in the Order preliminarily approving the Settlement, the Court expressly held that "the corporate governance reforms on which the parties have agreed will immediately benefit Athira and its shareholders while avoiding the risks and costs of further litigation." ECF No. 21 at 7.<sup>3</sup>

The Fee and Expense Amount is also reasonable in light of attorneys' fees approved in other derivative settlements with comparable or less robust corporate governance reform packages. *See, e.g.*, *In re F5 Networks, Inc. Derivative Litig.*, 2011 U.S. Dist. LEXIS 169352, at \*3 (W.D. Wash. Jan. 6, 2011) (\$5 million fee in governance-only settlement); *In re Southern Company S'holder Litig.*, No. 117-cv-00725-MHC, slip op. (N.D. Ga. June 9, 2022) (\$3.5 million fee for corporate therapeutics) Lead Counsel Decl., Ex. 6; *Nixon-Crenshaw derivatively for Dycom Industries, Inc.*, No. 18-25289-CIV-Singhal/Goodman (S.D. Fla. 2021) (\$2.5 million fee in governance-only settlement); Lead Counsel Decl., Ex. 7; *In re MiMedx Group, Inc. S'holder Deriv. Litig.*, No. 1:18-cv-04486-WMR (N.D. Ga.)

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<sup>3</sup> The Governance Reforms are attached as Exhibits 1-4 to the Stipulation and were extensively discussed in Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement. *See* ECF No. 17 at §III. As such, Plaintiffs incorporate that discussion herein.

1 (\$3.5 million fee for corporate therapeutics) Lead Counsel Decl., Ex. 8; *In re HD Supply Holdings Inc.*  
 2 *Deriv. Litig.*, No. 1:17-cv-02977-MLB (N.D. Ga. 2021) (granting attorneys' fees of \$1.9 million) Lead  
 3 Counsel Decl., Ex. 9; *In re RTI Surgical Deriv. Litig.*, No. 1:20-cv-3347-MFK (N.D. Ill. 2020) (granting  
 4 attorneys' fees of \$1.5 million) Lead Counsel Decl. Ex. 10; *Sciabacucchi et al v. Barton et al*, Docket  
 5 No. 2:17-cv-01568 (W.D. Wash. Oct 23, 2017) (granting attorneys' fees of \$1.3 million for corporate  
 6 governance therapeutics) Lead Counsel Decl., Ex 11.

7       **C.     The Fee And Expense Amount Is Fair  
           And Reasonable In Light Of Other Pertinent Factors**

8       **1.     The Risks of Litigation, Skill Required, and Standing of  
           Counsel**

9  
 10 Plaintiffs believed and continue to believe that their claims are meritorious, but derivative  
 11 litigation is highly complex, and inherently risky. Indeed, the Ninth Circuit has noted that "the odds  
 12 of winning [a] derivative lawsuit [are] extremely small" because "derivative lawsuits are rarely  
 13 successful." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1994); *see also Maher*, 714  
 14 F.2d at 455 ("Settlements of shareholder derivative actions are particularly favored because such  
 15 litigation is notoriously difficult and unpredictable"). As such, the Delaware Court of Chancery has  
 16 described the failure of a Board's duty to monitor as "possibly the most difficult theory in  
 17 corporation law upon which a plaintiff might hope to win a judgment." *In re Caremark Int'l*, 698  
 18 A.2d 959, 967 (Del. Ch. Sept. 25, 1996).

19       The skill and experience required to successfully prosecute and resolve these inherently risky  
 20 Derivative Actions are additional factors that support approval of the Fee and Expense Amount. *See*  
 21 *MRV Commc'ns*, 2013 U.S. Dist. LEXIS 86295, at \*8 (approving fee and finding that "the successful  
 22 prosecution of this action required knowledge and expertise in the fields of shareholder derivative  
 23 litigation and options backdating."). Here, Plaintiffs' Counsel are nationally recognized  
 24 practitioners in the field of stockholder derivative litigation and have been responsible for many  
 25 significant recoveries. *See* Lead Counsel Decl. at Exs. 1-5. Plaintiffs' Counsel provided extensive,

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1 high-quality representation throughout the pendency of the Derivative Actions, leveraging their  
 2 substantial experience, informed by their substantial investigation, and armed with high-quality  
 3 pleadings to negotiate the highly beneficial terms of the Settlement. *See Lead Counsel Decl.* ¶¶ 35-  
 4 37.

5 The standing of opposing counsel may also be considered in determining an allowance of  
 6 counsel fees. *See In re Warner Commun's Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985).  
 7 Defendants were represented in the Derivative Actions by experienced, skillful, and well-respected  
 8 attorneys that vigorously defended their clients' interests. Defendants' Counsel were motivated to  
 9 negotiate an attorneys' fee provision that was fair and in the best interests of their clients.

10 The quality of Plaintiffs' Counsel's efforts throughout the Derivative Actions while facing  
 11 premier international defense firms demonstrates that the Fee and Expense Amount is fair and  
 12 reasonable and should be approved. *Id.* ("The quality of opposing counsel is also important in  
 13 evaluating the quality of plaintiffs' counsels' work."), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

14 **2. The Contingent Nature of Plaintiffs' Counsel's  
 15 Representation Justifies the Fee and Expense Amount**

16 Courts have long recognized that in reviewing fee agreements, the fact that Plaintiffs'  
 17 Counsel's compensation is contingent upon recovery should be taken into account. *See Jones v. GN  
 18 Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 941 (9th Cir. 2011)  
 19 ("[R]easonableness" factors, include "the quality of representation, the benefit obtained [], the  
 20 complexity and novelty of the issues presented, and the risk of nonpayment . . ."). The contingency  
 21 factor is based on elementary considerations of fairness and justice. As the Fourth Circuit explained  
 22 in *McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir. 1967), "[t]he effective lawyer will not win all  
 23 of his cases, and any determination of the reasonableness of his fees in those cases in which his client  
 24 prevails must take account of the lawyer's risk of receiving nothing for his services." *See also*  
 25 *Chrysler*, 223 A.2d at 389 (Chancellor exercised "sound business judgment" by taking "the

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1 contingent nature of the litigation” into consideration in approving attorneys’ fees); *In re Plains Res., Inc. S’holders Litig.*, 2005 Del. Ch. LEXIS 12, at \*3 (Del. Ch. Feb. 4, 2005) (noting public policy “to reward this risk-taking in the interests of shareholders”).

4 Non-payment in contingent-fee stockholder litigation is a real risk posed to plaintiffs’  
 5 counsel. For example, in the well-known *Disney* derivative action, the plaintiffs’ counsel devoted  
 6 thousands of hours, and incurred millions of dollars in expenses, only to see judgment entered against  
 7 them on all claims, which was affirmed on appeal. *Brehm v. Eisner (In re Walt Disney Derivative Litig.)*, 907 A.2d at 693, *aff’d*, 906 A.2d 27 (Del. 2006). Indeed, there are numerous examples of  
 9 other stockholder actions that were dismissed outright on motion practice, whether at the pleading  
 10 stage or on summary judgment or ultimately ended in post-trial defeat.<sup>4</sup> No fee of any sort is earned  
 11 or awarded in such cases, nor do the plaintiffs’ counsel recover their often-substantial out-of-pocket  
 12 expenses.

13 Thus, the contingent nature of Plaintiffs’ Counsel’s undertaking, especially in light of the  
 14 substantial inherent risks of the litigation, further supports approval of the Fee and Expense Amount.

15 **3. The Lodestar “Cross-Check” Supports the Fee and  
 16 Expense Amount**

17 A so-called “lodestar cross-check”<sup>5</sup> also supports the reasonableness of the agreed-to Fee  
 18 and Expense Amount. *See Roberti v. OSI Sys., Inc*, 2015 U.S. Dist. LEXIS 164312, at \*19 (C.D.  
 19 Cal. Dec. 8, 2015) (“The reasonableness of [the fee award] is confirmed by a cross-check with a  
 20 lodestar comparison.”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002)  
 21 (“Calculation of the lodestar, which measures the lawyers’ investment of time in the litigation,

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22 <sup>4</sup> See, e.g., *In re Tesla Inc. S’holder Derivative Litig.*, 2023 U.S. Dist. LEXIS 165018 (N.D. Cal.  
 23 2023); *Emerald Partners v. Berlin*, 787 A.2d 85 (Del. 2001) (entering judgment for defendants on  
 24 all claims after two trials); *Kahn v. Lynch Commc’n. Sys., Inc.*, 669 A.2d 79 (Del. 1995) (dismissal  
 25 of all plaintiffs’ derivative claims on appeal).

26 <sup>5</sup> The “lodestar” is produced by multiplying the number of hours expended by counsel’s hourly rate.  
 27 *Roberti*, 2015 U.S. Dist. LEXIS 164312, at \*19.

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1 provides a check on the reasonableness of the percentage award.”). Nonetheless, when considering  
 2 a fee and expense amount in shareholder derivative actions, courts should look beyond a simple  
 3 lodestar calculation in making a fee award. *Cohn*, 375 F. Supp. 2d at 862 (citing *Blum v. Stenson*,  
 4 465 U.S. 886 (1984)).

5 Plaintiffs’ Counsel committed significant time and expense to prosecuting the Derivative  
 6 Actions, including a collective lodestar of \$1,388,774.75 and \$29,687.02 in unreimbursed, out-of-  
 7 pocket expenses. *See* Lead Counsel Decl. at ¶ 43. It is common in complex cases such as the  
 8 Derivative Actions to award substantial multipliers to successful counsel’s lodestar. *See, e.g.*,  
 9 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051-54 (9th Cir. 2002) (affirming fee award equal to  
 10 lodestar multiplier of 3.65, and citing 23 shareholder settlements and multipliers for each where the  
 11 average multiplier was 3.28); *Destefano v. Zynga, Inc.*, 2016 U.S. Dist. LEXIS 17196, at \*69 (N.D.  
 12 Cal. Feb. 11, 2016) (“Multipliers of 1 to 4 are commonly found to be appropriate in complex class  
 13 action cases.”); *Buccellato v. AT&T Operations, Inc.*, 2011 U.S. Dist. LEXIS 85699, at \*4 (N.D.  
 14 Cal. June 30, 2011) (approving 4.3 lodestar multiplier and listing cases approving multipliers ranging  
 15 from 4.3 to 9.3); *In re 3Com Corp. Sec. Litig.*, No. C-97-21083, slip op. at 7 (N.D. Cal. Mar. 9, 2001)  
 16 (6.7 multiplier).

17 Here, however, Plaintiff’s Counsel have a ***negative*** multiplier of 0.80.<sup>6</sup> Lead Counsel Decl.  
 18 at ¶ 44. A “multiplier of less than one (sometimes called a negative multiplier) further suggests that  
 19 the negotiated fee award is a reasonable and fair valuation of the services rendered [] by [] counsel.”  
 20 *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010); *see also In re Bear*  
 21 *Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012)  
 22 (“[T]he lodestar cross-check results in a negative multiplier of less than 0.92 – a strong indication of  
 23 the reasonableness of the proposed fee.”); *In re NTL, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 13661,  
 24

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25 <sup>6</sup> \$1,150,000 - \$12,000 Service Awards - \$29,687.02 expenses = \$1,108,312.98 (Total Fee). Total  
 26 Fee divided by \$1,388,774.75 collective lodestar = 0.80 negative multiplier.

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1 at \*30 (S.D.N.Y. Mar. 1, 2007); *adopted by* 2007 U.S. Dist. LEXIS 32285 (S.D.N.Y. May 2, 2007)  
 2 (negative multiplier “is reasonable because it will not bring a windfall to co-lead plaintiffs’  
 3 counsel”); *Jermyn v. Best Buy Stores, L.P.*, 2012 U.S. Dist. LEXIS 90289, at \*27 (S.D.N.Y. June  
 4 27, 2012) (“negative” lodestar multiple indicates reasonableness of fee); *In re Marsh & McLennan*  
 5 *Cos., Inc. Sec. Litig.*, 2009 U.S. Dist. LEXIS 120953, at \*59 (S.D.N.Y. Dec. 23, 2009) (fee request  
 6 constituting “deep discount” from lodestar “unquestionably” supports the award).

7       The time spent by Plaintiffs’ Counsel is reasonable under the circumstances of the Derivative  
 8 Actions. Plaintiffs’ Counsel expended significant time and expenses in order to achieve the benefits  
 9 of the Settlement, including, *inter alia*: (i) reviewing and analyzing the Company’s filings with the  
 10 Securities and Exchange Commission; (ii) reviewing and analyzing press releases, announcements,  
 11 transcripts of conference calls with financial analysts and investors, news articles, media reports,  
 12 and other publicly available information concerning matters alleged in the Derivative Actions; (iii)  
 13 reviewing and analyzing documents produced by Athira pursuant to a books-and-records demand  
 14 under Section 220 of the Delaware General Corporation Law and a confidentiality agreement  
 15 consisting of Athira board minutes and related materials concerning the facts and circumstances at  
 16 issue; (iv) reviewing and analyzing the pleadings and other papers filed in the Securities Class  
 17 Action; (v) reviewing and analyzing the Company’s Corporate Governance Guidelines, Code of  
 18 Business Conduct. and Ethics, and the charters of the Audit Committee and the Nominating and  
 19 Corporate Governance Committee of Athira’s Board of Directors; (vi) researching relevant  
 20 information available from Washington State University, the U.S. Patent and Trademark Office, and  
 21 the National Institute of Health concerning the facts and circumstances at issue; (vii) researching,  
 22 drafting, and filing derivative complaints and preparing and serving a books-and-records inspection  
 23 demand and litigation demands; (viii) researching the applicable law with respect to the claims  
 24 asserted in the Derivative Actions and the potential defenses thereto; (ix) preparing detailed  
 25  
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1 settlement demands; and (x) engaging in substantive, protracted settlement discussions with  
 2 Defendants' counsel under the auspices of the Mediator. *See Lead Counsel Decl.* at ¶45.

3 In addition, the hourly rates charged by Plaintiffs' Counsel are unquestionably reasonable.

4 *See Roberti*, 2015 U.S. Dist. LEXIS 164312, at \*19; *Seinfeld v. Coker*, 847 A.2d 330, 337-38 (Del.  
 5 Ch. 2000) (awarding fee amounting to more than \$1,300 per hour). Indeed, the hourly rates charged  
 6 by Plaintiffs' Counsel are comparable to the fees charged by Defendants' counsel.<sup>7</sup> Accordingly,  
 7 the lodestar "cross-check" confirms that the agreed-to Fee and Expense Amount is fair and  
 8 reasonable compensation for the time and labor Plaintiffs' Counsel expended in achieving the  
 9 benefits of the Settlement.

10 **D. The Service Awards Should Be Approved**

11 Plaintiffs respectfully request that the Court approve nominal service awards of \$3,000 for  
 12 each of the Plaintiffs - to be paid from the Fee and Expense Amount - in recognition of the substantial  
 13 benefits achieved for Athira and Current Athira Stockholders (Stip., ¶V(D)(5)), which are well  
 14 within the range approved by courts in derivative actions in this District and others as fair and  
 15 reasonable. *See Stedman v. Progressive Direct Ins. Co.*, 2023 U.S. Dist. LEXIS 164860, at \*13-14  
 16 (W.D. Wash. Sep. 14, 2023) ("[R]easonable [service] awards to class representatives are  
 17 permitted."); *Lizondro-Garcia v. Kefi LLC*, 2014 U.S. Dist. LEXIS 143165, at \*23 (S.D.N.Y. Oct.  
 18 7, 2014) (service awards common in stockholder representative actions); *In re Cendant Corp.  
 19 Derivative Action Litig.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002) (service awards recognize  
 20 plaintiffs' public service); *Sauby v. City of Fargo*, 2009 U.S. Dist. LEXIS 70270, at \*3 (D.N.D. July  
 21 16, 2009) (approving awards of \$5,000 and \$10,000 not "to 'compensate' plaintiffs, but instead serve  
 22 to encourage people with legitimate claims to pursue the action"); *Geare v. Begley, et al.*, No. 11-

23 <sup>7</sup> See Brightflag, Hourly Rates in Am Law 100 Firms: Increases and Key Drivers, 2023 (available at  
 24 [https://brightflag.com/asset/law-firm-rates-report/?utm\\_source=press\\_release&utm\\_medium=press\\_release&utm\\_campaign=rate\\_report](https://brightflag.com/asset/law-firm-rates-report/?utm_source=press_release&utm_medium=press_release&utm_campaign=rate_report)). In  
 25 this report, billable rates for the top 100 U.S. law firms averaged \$961 per hour in the first nine  
 months of 2023 with a billable rate of between \$321 and \$1,433 per hour across all the firms.

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1 cv-09074, Final Order and Judgment, ¶3 (N.D. Ill. Jan. 23, 2015) (awarding \$3,000 per plaintiff),  
2 Lead Counsel Decl., Ex. 12. In this district, five thousand dollars has been approved as a reasonable  
3 amount for a service award. *Stedman*, at \*14. See, e.g., *In re Online DVD-Rental Antitrust Litig.*,  
4 779 F.3d 934, 947-48 (9th Cir. 2015).

5 **III. CONCLUSION**

6 The agreed-to Fee and Expense Amount, including the Service Awards to be drawn  
7 therefrom, is entirely fair and reasonable in light of the substantial benefits achieved in the Derivative  
8 Actions for the benefit of Athira and Current Athira Stockholders, and all other relevant factors.  
9 Accordingly, for all of the foregoing reasons, Plaintiffs respectfully request that the Court grant  
10 Plaintiffs' Motion for Approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs.

11 Dated: May 17, 2024

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12 /s/ Joshua M. Rubin

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